

ROCIO GARCIA,

Plaintiff,

V.

WAL-MART ASSOCIATES, INC.,

Defendant.

Civil Action No. 3:22-cv-00141

DEFENDANT'S NOTICE OF REMOVAL

WAL-MART ASSOCIATES, INC. (“Defendant”) respectfully submits this Notice of Removal for the purpose of removing the above-entitled action from County Court at Law Three in El Paso County, Texas to the United States District Court for the Western District of Texas. As grounds for this Notice of Removal, Defendant states as follows:

I. PROCEDURAL HISTORY

1. Plaintiff commenced this action in County Court at Law Three in El Paso County, Texas, Cause No. 2022DCV0782, by filing her Original Petition (“Petition”) on March 15, 2022. Copies of all pleadings filed in that action are attached as Exhibit A.

2. Plaintiff served her Original Petition on Defendant on April 13, 2022 [Exhibit “A”].

3. As Defendants more fully state below, removal of this matter is proper under 28 U.S.C. § 1332 based on diversity jurisdiction.

II. DIVERSITY JURISDICTION

4. Pursuant to 28 U.S.C. § 1332(a), this Court has original jurisdiction over actions between citizens of different states where the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

5. Plaintiff is a resident and, therefore, a citizen of El Paso County, Texas.

6. Defendant Wal-Mart Associates, Inc. is a Delaware corporation, with its principal place of business located in Arkansas. Therefore, Defendant Wal-Mart Associates, Inc. is a citizen of Delaware and Arkansas. Accordingly, there is complete diversity of citizenship between Plaintiff and the Defendants. 28 U.S.C. §§ 1332, 1441.

7. Plaintiff is claiming damages for physical pain and suffering, mental anguish, loss of earning capacity, physical impairment, disfigurement, all in the past and future. Plaintiff also seeks past and future medical expenses. Plaintiff seeks monetary relief over \$250,000 but less than \$1,000,000. *See* Exhibit “A.” Plaintiff’s claim for damages, therefore, exceeds \$75,000, exclusive of interest and costs.

8. Because Plaintiff is a citizen of Texas and Defendant is a citizen of Delaware and Arkansas, this Court has original jurisdiction over this action pursuant to the provisions of 28 U.S.C. § 1332(a)(1).

III. OTHER REMOVAL MATTERS

9. Defendant reserves the right to amend or supplement this Notice of Removal.

10. There have been no pleadings served upon Defendant other than Plaintiff’s Original Petition.

11. This Notice of Removal is filed within 30 days of service upon Defendant of the Petition in compliance with 28 U.S.C. § 1446(b).

12. Pursuant to 28 U.S.C. § 1446(d), Defendant shall give Plaintiff written notice of the filing of this Notice of Removal and shall file a written notice of this Notice of Removal with the Clerk of the District Court of El Paso County Texas, County Court at Law No. Three, attaching a file-stamped copy of this Notice of Removal.

13. Pursuant to 28 U.S.C. §§ 1332 and 1446, this action is removable to the United States District Court for the Western District of Texas.

14. WHEREFORE, Defendant give notice that *Rocio Garcia v. Wal-Mart Associates, Inc.*, Cause No. 2022-DCV0782, in the County Court at Law No. Three of El Paso County Texas is removed to the United States District Court for the Western District of Texas.

Respectfully submitted,

BLANCO ORDOÑEZ MATA & WECHSLER, P.C.

5715 Cromo Drive

El Paso, Texas 79912

(915) 845-5800

(915) 845-5555 (Facsimile)

By: 

STEVEN J. BLANCO

State Bar No. 00796217

sblanco@bomwlaw.com

ROBERT M. ESTRADA

State Bar No. 24071886

restrada@bomwlaw.com

Attorneys for Defendant WAL-MART ASSOCIATES,
INC.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served upon all counsel of record utilizing the Court's electronic filing system on this the 26th day of April, 2022.



STEVEN J. BLANCO

EXHIBIT A



**Service of Process
Transmittal**

04/13/2022

CT Log Number 541399873

TO: KIM LUNDY- EMAIL
Walmart Inc.
GLOBAL GOVERNANCE/CENTRAL INTAKE, 2914 SE I STREET MS#0200
BENTONVILLE, AR 72712-3148

RE: Process Served in Florida

FOR: Wal-Mart Associates, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Re: GARCIA ROCIO // To: Wal-Mart Associates, Inc.

DOCUMENT(S) SERVED: Citation, Return, Original Petition

COURT/AGENCY: El Paso County Court at Law Number 3, TX
Case # 2022DCV0782

NATURE OF ACTION: Personal Injury - Slip/Trip and Fall - 05/26/2021, in El Paso County, Texas

ON WHOM PROCESS WAS SERVED: C T Corporation System, Plantation, FL

DATE AND HOUR OF SERVICE: By Process Server on 04/13/2022 at 03:52

JURISDICTION SERVED : Florida

APPEARANCE OR ANSWER DUE: At or before 10 a.m. of the Monday next after the expiration of 20 days after the date of service

ATTORNEY(S) / SENDER(S): Robert E. Riojas
Riojas Law Firm, P.C.
2035 Grant Avenue
El Paso, TX 79930
915-301-7819

ACTION ITEMS: CT has retained the current log, Retain Date: 04/13/2022, Expected Purge Date: 04/23/2022

Image SOP

REGISTERED AGENT ADDRESS: C T Corporation System
1200 South Pine Island Road
Plantation, FL 33324
877-564-7529
MajorAccountTeam2@wolterskluwer.com

The Information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.



PROCESS SERVER DELIVERY DETAILS

Date: Wed, Apr 13, 2022
Server Name: Drop Service

Entity Served	WAL-MART ASSOCIATES, INC.
Case Number	2022DCV0782
Jurisdiction	FL

Inserts		



*111 #1124
4/13/22
2:20 PM*

THE STATE OF TEXAS

Authorized Process Servers.Com
954.851.5555

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org"

TO: **WALMART ASSOCIATES, INC.**, which may be served with process by serving its registered agent, **CT Corporation System at 1200 South Padre Road, Plantation, FL 33324** or wherever he/she may be found

Greetings:

You are hereby commanded to appear by filing a written answer to the **Plaintiff's Original Petition** at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable **County Court at Law Number 3**, El Paso County, Texas, at the Court House of said County in El Paso, Texas.

Said Plaintiff's Petition was filed in said court on this the 15th day of March, 2022, by Attorney at Law, **ROBERT E RIOJAS**, 2035 GRANT AVE, EL PASO, TX 79930 in this case numbered **2022DCV0782** on the docket of said court, and styled:

**ROCIO GARCIA
VS.
WALMART ASSOCIATES, INC.**

The nature of Plaintiff's demand is fully shown by a true and correct copy of the **Plaintiff's Original Petition** accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at El Paso, Texas, on this the 12th day of April, 2022

CLERK OF THE COURT

NORMA FAVELA BARCELEAU
District Clerk
Enrique Moreno County Courthouse
500 E. San Antonio Ave, RM 103
El Paso, Texas 79901



Attest: NORMA FAVELA BARCELEAU District Clerk
El Paso County, Texas

By *JoAnn Acosta* Deputy
JoAnn Acosta

Rule 106: "the citation shall be served by the officer delivering to each defendant, in person, a true copy of the citation with the date of delivery endorsed thereon and with a copy of the petition attached thereto."

RETURN

Came on hand on _____ day of _____, 20____, at _____ o'clock ____ M., and executed in _____ County, Texas, by delivering to each of the within-named defendants, in person, a true copy of this Citation, having first endorsed thereon the date of delivery, together with the accompanying true and correct copy of the **Plaintiff's Original Petition**, at the following times and places, to-wit:

NAME	MONTH	DATE DAY	YEAR	Hour	TIME Min.	M.	Place, and Course and Distance From Court House

And not executed as to the defendant, _____

The diligence used in finding said defendant, being _____

And the cause of failure to execute this process is: _____

And the information received as to the whereabouts of the said defendant, being _____

FEES—SERVING ____ copy ____ \$ _____ Sheriff

County, Texas

Total _____ \$ _____ by _____ Deputy

CERTIFICATE OF DELIVERY

I do hereby certify that I delivered to _____, on the _____ day of _____, 20____, at _____ o'clock ____ m. this copy of this instrument.

_____, Sheriff/Agent
_____, County, Texas
By _____, Deputy/Agent

SUBSCRIBED AND SWORN TO BEFORE ME ON THE _____ DAY OF _____, 20____.

(SEAL)

NOTARY PUBLIC, STATE OF TEXAS

El Paso County - County Court at Law 3

Filed 3/15/2022 11:26 AM
 Norma Favela Barcealeu
 District Clerk
 El Paso County
 2022DCV0782

CAUSE NO. _____

ROCIO GARCIA

Plaintiff,

vs.

WALMART ASSOCIATES, INC.,

Defendant.

EL PASO COUNTY, TEXAS

____ JUDICIAL DISTRICT COURT

PLAINTIFF'S ORIGINAL PETITION

TO THE COURT:

COMES NOW Plaintiff ROCIO GARCIA, by and through her attorney, Robert E. Riojas, Riojas Law Firm, P.C., and files this Original Petition against Defendant WALMART ASSOCIATES, INC.. In support of this Original Petition Plaintiff would show as follows.

I.

Discovery Control Plan

1. For purposes of Rule 190.1, Plaintiff asserts that a Level II discovery plan is appropriate. However, Plaintiff reserves the right to request amendment and entry of an order establishing a Level III discovery control plan.

II.

Parties

2. Plaintiff ROCIO GARCIA is a resident of the County of El Paso, State of Texas. The last three numbers of Plaintiff's Texas driver's license number are _____. The last three numbers of Plaintiff's Social Security are 463.

3. Defendant WALMART ASSOCIATES, INC. is a corporation conducting business in the county of El Paso County, Texas. It can be served by serving its registered agent, CT Corporation System: 1200 South Padre Road, Plantation, Florida 33324.

III.
Jurisdiction

4. This court is the proper venue because El Paso County, Texas is the county where the accident made the basis of this suit occurred. As a proximate result of said incident, damages in excess of the minimum jurisdictional limits of this Court were incurred by Plaintiff. Therefore, jurisdiction and venue are proper. Plaintiff will leave to the sound discretion of the jury as to what sums to award. However, since required, Plaintiff asserts, pursuant to Tex. R. Civ. P. 47, that she seeks monetary relief over \$250,000.00 but less than \$1,000,000.00.

IV.
Statement of Facts

5. This is a lawsuit arising from a work accident which occurred on May 26, 2021 in El Paso County, Texas when Plaintiff, an employee of Defendant WALMART ASSOCIATES, INC., sustained an injury in the course and scope of her employment. More specifically Plaintiff was tasked, without any assistance, to clean the bathroom. While attempting to do so, she slipped on water and fell on the floor. As a result of such incident, Plaintiff sustained serious and permanent injuries for which she seeks recovery. Such injuries include fracturing her left wrist from the fall, conditions which will effect Plaintiff for the remainder of her life.

V.
Cause of Action: Negligence and Negligence Per Se

6. Plaintiff re-alleges all of the foregoing and asserts that the conduct of Defendant WALMART ASSOCIATES, INC. constitutes negligence. As her employer, Defendant WALMART ASSOCIATES, INC. owed her a duty to provide her with a safe workplace, to ensure that its bathrooms were safe and free of dangerous slippery floors; to periodically inspect their bathrooms to ensure they were not wet. Defendant breached such duty and that the aforementioned negligent conduct, either individually or in concert, constitutes negligence. Said conduct and actions and/or

omissions were the proximate cause of the injuries and damages suffered by Plaintiff, as set forth herein.

VI.
Damages

7. Such negligence described above was the proximate cause of Plaintiff's injuries which include physical pain and suffering, mental anguish, loss of earning capacity, physical impairment, disfigurement, all in past and future. Plaintiff sustained medical expenses in the past for which she now seeks compensation. In addition, Plaintiff will likely incur medical expenses in the future, for which she also seeks compensation.

VII.
Discovery

REQUEST FOR DISCLOSURE

8. Pursuant to Rule 194, Plaintiff requests that Defendant disclose, within 51 days of service of this request, the information or material described in Rule 194.2.

VIII.
Rule 193.7 Notice

9. Pursuant to Rule 193.7, Plaintiff hereby gives actual notice that any and all documents produced by Defendant will be used at any pretrial proceedings and/or at the trial in this matter.

IX.
Right to Amend

10. Plaintiff reserves the right to further amend this Petition as discovery is undertaken and more facts become known.

X.
Jury Demand

11. Plaintiff respectfully demands her right to have a trial by jury of 12 persons.

XI
Conclusion and Prayer

WHEREFORE, Plaintiff request Defendant WALMART ASSOCIATES, INC. to be cited to appear and answer, and that after final trial, Plaintiff have judgment against Defendant as follows:

- a. actual damages in a sum within the jurisdictional limits of the court;
- b. prejudgment interest as provided by law;
- c. post-judgment interest as provided by law;
- d. costs of suit; and
- e. such other and further relief to which Plaintiff may be justly entitled.

Plaintiff reserves the right to amend and/or modify this Petition as necessary or appropriately after additional or further discovery is completed in this matter.

Respectfully Submitted,

RIOJAS LAW FIRM, P.C.

[s] Robert E. Riojas

By: Robert E. Riojas
Bar No. 00791531
2035 Grant Avenue
El Paso, Texas 79930-1016
Telephone: (915) 301-7819
Fax: (915) 759-8665
Email: rriojas@riojaslawfirm.net